

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket No. 15032US02

PATENT

In the Application of:)	
)	Electronically Filed on July 27, 2009
Jeyhan Karaoguz, et al.)	
)	
Serial No. 10/672,648)	
)	
Filed: September 26, 2003)	
)	
For: THIRD-PARTY ACCESS AND)	
CONTROL OF MEDIA)	
PERIPHERALS ON A MEDIA)	
EXCHANGE NETWORK)	
)	
Examiner: BATES, KEVIN T.)	
)	
Group Art Unit: 2456)	
)	
Confirmation No.: 8226)	

SECOND PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reasons stated on the attached sheets.

Respectfully submitted,

Date: July 27, 2009

By: /Joseph M. Butscher/
Joseph M. Butscher
Reg. No. 48,326

McANDREWS, HELD & MALLOY, LTD.
500 West Madison Street, 34th Floor
Chicago, Illinois 60661
Telephone: (312) 775-8000
Facsimile: (312) 775 – 8100

REMARKS

The present application includes pending claims 1-14 and 36-49, all of which have been rejected. Claims 1-10, 12-14, 36-45 and 47-50 and 52 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 2005/0028208 ("Ellis") in view of U.S. 2004/0003051 ("Krzyzanowski") and "common knowledge in the art." Claims 11 and 46 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of U.S. 6,665,384 ("Daum"). Claims 51 and 53 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of Krzyzanowski in view of U.S. 2002/0002039 ("Qureshey").

The proposed combination of references does not render claims 1-10, 12-14, 36-45 and 47-49 unpatentable. See April 15, 2009 Amendment at pages 10-14. Initially, the Office Action has not demonstrated that any of the cited references describes, teaches or suggests "creating a **user-defined schedule of media stored at the first location** using the television at the first location; and **pushing media from the first location** to the at least one media peripheral **at the second location** according to the user-defined schedule of media created at the first location," as recited, for example, in claim 1. See *id.* at pages 10-14. Thus, for at least these reasons, the Office Action has not established a *prima facie* case of unpatentability with respect to the pending claims.

The Applicants demonstrate that the portions of Ellis (namely, Ellis at ¶¶ 99-100, see May 26, 2009 Office Action at page 3) that the Office Action relies on as disclosing the limitations noted above do not, in fact, describe, teach or suggest the limitations. See April 15, 2009 Office Action at pages 11-12.

The Office Action acknowledges that “Ellis does not explicitly indicate ... defining a schedule of media at a first location using the TV and pushing the media from that location.” See May 26, 2009 Office Action at page 3. The Office Action relies on Krzyzanowski as disclosing this limitation. See *id.* at page 4. However, the Applicants demonstrate that the Office Action’s reliance on Krzyzanowski is misplaced. See April 15, 2009 Amendment at pages 12-13.

Additionally, the Office Action does not demonstrate that the cited references describe, teach or suggest a “user-defined schedule of media,” as recited in the claims. See April 15, 2009 Amendment at page 14. Thus, for at least this additional reason, the Office Action has not established a *prima facie* case of unpatentability with respect to the pending claims.

In particular, the Office Action relies on Krzyzanowski at ¶ [0133] as disclosing a “user-defined schedule of media.” See May 26, 2009 Office Action at page 4. The Applicants demonstrate that the Office Action’s reliance on this portion of Krzyzanowski is misplaced. See April 15, 2009 Amendment at page 14.

For at least the reasons discussed above, the Applicants respectfully submit that the Office Action has also not established a *prima facie* case of unpatentability with respect to claims 11 and 46.

The Applicants respectfully submit that a *prima facie* case of unpatentability has not been established with respect to any of the pending claims for at least the reasons discussed above and request reconsideration of the claim rejections.

As the Panel can appreciate, the present application has undergone extensive prosecution. Indeed, the application has been pending since September 26, 2003. The

Appln. No.: 10/672,648
Second Pre Appeal Brief Request for Review

Applicants have made numerous attempts to amend the claims. If the Examiner or the Panel are considering a particular reasonable claim amendment that would lead to an allowance, the Applicants invite the Examiner to contact the undersigned attorney. Such a proposed amendment would most likely expedite prosecution towards allowance, thereby rendering a full Appeal unnecessary.

The Applicants have already paid \$510 for the first Notice of Appeal. See November 16, 2007 Notice of Appeal. Accordingly, the Applicants owe \$30 for the Second Notice of Appeal. The Commissioner is authorized to charge any necessary fees, including the \$30 fee for the Second Notice of Appeal, or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,

Date: July 27, 2009

/Joseph M. Butscher/
Joseph M. Butscher
Registration No. 48,326

MCANDREWS, HELD & MALLOY, LTD.
500 West Madison Street, 34th Floor
Chicago, Illinois 60661
Telephone: (312) 775-8000
Facsimile: (312) 775-8100